

DEPARTMENT OF HEALTH SERVICES

714/744 P STREET

BOX 942732

SACRAMENTO, CA 94234-7320
(916) 322-1584CMSP Letter 94-4
July 19, 1994All County Medical Services Program (CMSP) County
Welfare DirectorsSUBJECT: CMSP Eligibility Manual Revisions - Transfer of
Property

Enclosed you will find two (2) copies of the CMSP Eligibility Manual revisions. This draft was prepared with input from the Small County Advisory Committee (SCAC), Eligibility Subcommittee, participating counties, and other interested parties. The revisions contained include:

Section 0408(a) is changed to read...

The transfer was made without adequate consideration but the applicant provides sufficient evidence, as specified in Section 0409 (b), that the transfer was not for the purpose of establishing or reducing the share of cost.

Section 0408(b) is changed to read.

There is a presumption that the property transferred by the applicant or beneficiary more than 2 months proceeding...

Section 0409(b) is changed to read.

A period of ineligibility may be imposed pursuant to Section 0411, if it is determined that the property was transferred without adequate consideration was transferred for the purpose of establishing eligibility or to reduce the share of cost as limited by (2).

The applicant of beneficiary may establish that the transfer was not for the purposes of establishing eligibility or reducing the share of cost by providing any probative evidence including that outlined in Sub-Sections 0409(b)(2)(A) and (B) below.

All CMSP Welfare Directors
Page Two

Section 0409 (b)(2)(C) is changed to read...

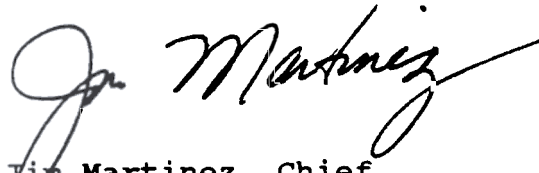
However, any such evidence presented must show by a preponderance of the evidence that the transfer was not for the purposes of establishing eligibility or reducing the share of cost.

Section 0411 (b)(5)(D) is changed to read..

The period of ineligibility shall begin with the month

These changes are effective immediately. If you have any questions regarding this letter of the enclosed revisions, please contact Mr. Albert Cooper of my staff at (916) 322-1615 as soon as possible.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Martinez", with a stylized flourish at the end.

Jim Martinez, Chief
County Medical Services Unit

Enclosure

cc: CMSP Contact Persons

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Article 7. Property

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- 0403 Treatment of Property
- 0404 Owner of Property

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A transfer which was to satisfy a legal debt.

A transfer which was to reimburse someone other than a responsible relative, as specified in Section 0351, for care or benefits provided on the basis of an agreement or understanding that reimbursement would be made. The applicant or beneficiary shall provide evidence that clearly establishes that the value of the care or benefits provided was reasonably equivalent to the value of the property transferred.

A written transmission of a married couple's non-exempt community property into equal shares of separate property through an interspousal agreement.

- 4) Foreclosure or repossession of the property was imminent at the time of transfer, and there is no evidence of collusion.
 - (5) The transfer was made in return for an enforceable contract for life care, which does not include complete medical care. In this case each full item of need provided under the life care contract shall be considered income in kind in accordance with Section 0509.
 - (6) The transfer was made without adequate consideration but the applicant or beneficiary provides sufficient evidence, as specified in Section 0409 (b), that the transfer was not for the purpose of establishing eligibility or reducing the share of cost.
- (b) There is a presumption that property transferred by the applicant or beneficiary more than 2 months preceding the date of initial application was not transferred to establish eligibility or reduce the share of cost. Such property shall not be considered in determining eligibility.
- (c) While the transfer of property by an applicant or beneficiary from one form to another as described (a) above, has no effect on eligibility, any property obtained by an applicant or beneficiary through such a transfer may have an effect on eligibility and therefore shall be evaluated to determine its effect.

0409. Transfer of Property Which Results in Ineligibility.

- (a) Transfer of property shall result in ineligibility for CMSP if:

The transfer met none of the conditions specified in Section 0408: or

- (2) The transfer was in return for an enforceable life care contract which includes complete medical care.
- (b) Transfer of property without adequate consideration shall result in ineligibility for CMSP if the transfer was made to establish eligibility or to reduce the share of cost.

A period of ineligibility may be imposed pursuant to Section 0411, if it is determined that property transferred without adequate consideration was transferred for the purpose of establishing eligibility or to reduce the share of cost as limited by (2).

The applicant or beneficiary may establish that the transfer was not for the purposes of establishing eligibility or reducing the share of cost by providing any probative evidence including that outlined in subsection 0409(b)(2)(A) and (B) below.

- (A) The applicant or beneficiary shall provide evidence which may include verification of the onset of traumatic injury or illness, diagnosis of a previously undetected disability condition or unexpected loss of income or resources after transfer and/or that adequate resources were available at the time of the transfer of property for support and medical care considering such things as the applicant's or beneficiary's age, health, life expectancy, and ability to understand extent of resources.
- (B) Such evidence may also include other subjective evidence including, but not limited to, evidence that the claimant transferred in order to avoid probate and/or that the claimant had no knowledge of CMSP or its benefits at the time of the transfer.
- (C) However, any such evidence presented must show by a preponderance of evidence that the transfer was not for the purpose of establishing eligibility or reducing a share of cost.

0411. Period of Ineligibility Due to Transfer of Property

- (a) Following a determination of ineligibility due to the transfer of property, there shall be a period of ineligibility. This period shall be the time during which the net market value of the property at the time of

transfer, less consideration received, would have supported the applicant or beneficiary and the applicant's or beneficiary's family.

- (b) The period of ineligibility shall be computed in the following manner:

Determine the net market value of the property at the time of transfer less any consideration received which is the net value of the property transferred.

Determine the portion of the net value of the property transferred which, if included in the property reserve at the time of transfer, would not have caused such reserve to exceed the property limit that was applicable at that time.

The portion of the net value of the property transferred that would not have fallen within the property limit at the time of transfer is the excess net value of the property transferred and shall be used to determine the period of ineligibility.

The number of months in the period of ineligibility shall be determined by dividing the excess net value of the property transferred by the monthly maintenance need for the applicant or beneficiary and the applicant's or beneficiary's family. The maintenance needs used shall be the maintenance needs in effect during each individual month since the date of the transfer. Income received by the family after the transfer shall not affect this computation.

The period of ineligibility may be further reduced by deducting the actual cost of the applicant or beneficiary or the following:

- (A) Medical expenses
- (B) Out-of-Home care costs in excess of the maintenance needs.
- (C) Major home repairs necessary to put the home into a livable condition.
- (D) The period of ineligibility shall begin with the month the transfer which resulted in ineligibility occurred, unless a 10 day notice is required and cannot be given. In that case, the period of ineligibility shall begin the first of the next month.

- (E) The period of ineligibility shall end when any of the following situations occur:

The property which was transferred and caused ineligibility is reconveyed to the applicant or beneficiary.

The applicant or beneficiary receives adequate consideration for the property.

Deduction of the amounts specified in (b) (4) and (5) has reduced the excess net market value to zero.

Article 7. Property

0401. Property Evaluation.

After determining the composition of the CFBU, the county department shall evaluate the property holdings of the CFBU to determine:

Property to be included in determining eligibility.

The value of the included property

Whether the total value of the included property exceeds the property reserve limits specified in Section 0420.

0401.5. Property Evaluation - Sneeve v. Kizer

The county department shall consider the results of a Medi-Cal eligibility determination made pursuant to the Sneeve v. Kizer lawsuit for any CMSP Applicant/Eligible who was included in the Medi-Cal determination.

All property Attributed to a CMSP applicant/eligible from a Sneeve v. Kizer calculation shall be included in their property reserve.

The property reserve shall be compared with the appropriate property limit shown in Section 0420 in order to determine eligibility.

0402. Availability of Property.

Property which is not available shall not be considered in determining eligibility. Property not available includes, but is not limited to, any property affected by court action/legal proceedings which is frozen until such action/proceedings are completed.

0403. Treatment of Property.

The separate property and share of community property of any person included in the CFBU shall be considered in determining CMSP eligibility. A spouse's share of community property is always one-half of the current total community property.

0404. Owner of Property.

The owner of property, for CMSP eligibility purposes, shall be the person who holds legal title to the property unless otherwise specified in these regulations. Ownership of property may be vested in one individual or shared with other individuals.

0405. Contracts of Sale.

Property purchased under a signed contract of sale by the applicant or beneficiary shall be included in the property reserve of the applicant or beneficiary.

Property being sold by the applicant or beneficiary under a signed contract of sale shall not be considered the property of the applicant or beneficiary. The interest payments received under the contract of sale shall be unearned income. The Principle payments received under the contract of sale shall be property.

Property being purchased or sold under a verbal or unsigned contract of sale shall be considered the property of the seller until the sale is complete.

0406. Conversion or Transfer of Property.

Conversion or transfer of property may affect eligibility. Sections 0407 and 0408 describe methods of converting or transferring property, and the effect of each method on eligibility.

0407. Conversion of Property--Treatment.

Conversion of property in itself from one form to another has no effect on eligibility; however, the property obtained through a conversion may have an effect on eligibility and therefore shall be evaluated to determine its effect. Insurance or other third-party payments for the loss or damage of property shall be treated as converted property rather than income.

0408. Transfer of Property Which Does Not Result In Ineligibility.

- (a) Transfer of property shall not result in ineligibility for CMSP under any of the following conditions:

The property would have been considered exempt pursuant to Section 0418 at the time of transfer.

- (2) The net market value of the property transferred, when included in the property reserve, would not result in ineligibility. The determination of value shall be made as of the time of transfer. If eligibility exists, the value of the property shall no longer be considered.

Adequate consideration is received. Adequate consideration is the fair market value of the property as defined in Section 0412 and includes:

0412. Market Value of Property.

The market value of property shall be determined.

The market value of real property shall be (1) or (2), unless the applicant or beneficiary chooses to meet the conditions of (3), and (3) is lower:

- (1) The assessed value determined under the most recent property tax assessment if the property is located in California.
- (2) The value established by applying the assessment method used in the area where the property is located, if the property is located outside of California.
- (3) The value established as the result of an appraisal by a qualified real estate appraiser, if the appraisal is obtained by the applicant or beneficiary and provided to the county department.

The market value of each item of personal property shall be determined by the specific methods contained in this article.

The market value of notes secured by deeds of trust and mortgages which are considered as other real property in accordance with Section 0441 (b) shall be established in accordance with Section 0441(c).

0413. Encumbrances.

Encumbrances of record are obligations for which the property is security. Encumbrances include, but are not limited to:

Loans.

Attachments for debts and taxes.

Chattel mortgages and liens.

0414. Share of Encumbrances Determination.

The share of encumbrances shall be determined as follows:

Determine the total market value of the property.

Determine the market value of the portion of the property that is to be considered.

Divide the amount determined in (b) by the amount determined in (a) to obtain the percentage that the portion of property is of the total property.

Multiply the total encumbrances on the property by the percentage determined in (c) above. This is the share of encumbrances.

0415. Net Market Value of Property.

The net market value of real or personal property is the owner's equity in that property.

The net market value shall be determined by subtracting the encumbrances of record from the market value.

The net market value of real or personal property owned jointly with other persons shall be determined by subtracting the beneficiary's share of encumbrances from the beneficiary's interest in the property.

0416. Utilization Requirements.

Nonbusiness other real property, as specified in Section 0427 (b), shall be utilized in order to be exempt unless the net market value, when added to the net market value of other nonexempt property, falls within the limits set forth in Section 0420.

The property is utilized if the owner is receiving net yearly income from the property of at least six percent of the net market value of the property.

- (1) For property not limited to seasonal use, this requirement is met if the net monthly income from the property is one-twelfth of six percent of the net market value of the property.
- (2) For property limited to seasonal use, this requirement is met if the net yearly income is six percent of the net market value of the property. Property limited to seasonal use includes, but is not limited to:
 - A. Farmland
 - B. Summer cabins.
- (3) For purpose of determining net yearly income for property limited to seasonal use, the year is considered to begin in the first month of the year in which income normally begins. Income from all months of the year shall be considered in determining net yearly income of the property, regardless of the eligibility status of the beneficiary in those months.
- (4) This requirement is met if the property has been sold, or the sale is in escrow and there is a bona

vide attempt to close the sale.

The owner shall be allowed six months to meet utilization requirements. The six month period shall be known as the utilization period, and shall begin on the first of the month following issuance of a notice of action informing the applicant or beneficiary that the property is not yielding sufficient income, as required in (a). The utilization period shall be stayed during periods of ineligibility in accordance with (j).

The utilization period may be extended for a maximum of one year for good cause, as specified in Section 0417.

If the county department determines that utilization requirements can only be met by sale of the property the utilization period shall be extended for as long as the property is listed for sale and meets the requirements to be considered otherwise unavailable in accordance with Section 0402.

An existing environmental impact report involving a property shall be considered by the county department in determining the utilization potential of the property.

A life estate interest in real property shall be utilized in accordance with this section.

The applicant or beneficiary may arrange for a reassessment of the property during the utilization period. The assessment shall affect utilization as follows:

- (1) The reassessment value shall be used in determining utilizations requirements.
- (2) The reassessment shall not affect the beginning date or the length of the utilization period.
- (h) The entire net market value of property not utilized in accordance with this section shall be included in the property reserve on the first of the month following the last month of the utilization period.
- (i) A utilization period shall begin whenever:
 - (1) An applicant who is a member of an CFBU, with other real property included in the property reserve of the CFBU that is not being utilized, becomes eligible except as specified in (I).
 - (2) The other real property that has been utilized, is no longer utilized.

The net market value of other real property, when added to the net market value of other nonexempt property, no longer falls within the limits set forth in Section 0420.

- (j) When a utilization period has begun and the beneficiary becomes ineligible for CMSP prior to its expiration, the remainder of the utilization period shall be applied of eligibility is subsequently reestablished and the property is not utilized at that time. However, if verification is provided that the property was utilized at any time during the period of ineligibility, a new utilization period shall begin.

0417. Utilization--Good Cause.

Good cause may impact utilization requirements.

- (a) Good cause, as required in Section 0416 (c), shall be found only if the applicant or beneficiary has made a bona fide effort to meet utilization requirements and is unable to do so because of circumstances beyond such person's control.
- (b) Circumstances beyond a person's control shall include any of the following situations:
 - (1) Death of a part owner of the property and inability or refusal of the administrator or executor of the estate of other responsible person to take actions necessary so that the utilization requirements are met of the property if such person is other than the applicant or beneficiary.

Prolonged illness causing the applicant or beneficiary to be homebound or hospitalized during the utilization period and unable to take the necessary action to meet utilization requirements or to arrange for an agent to do so.

Like reasons which the county department determines meet the general intent of good cause.

0418. Exemption of Property.

Certain real and personal property is exempt and shall not be included in determining eligibility. These property exemptions are specified in Sections 0425 through 0489. All real and personal property not exempt is nonexempt property.

0419. Property Reserve.

The property reserve is the net market value of the nonexempt property of those persons whose property is considered in determining the eligibility of the CFBU.

0420. Property Limit.

The members of the CFBU shall be ineligible for CMSP if the condition specified below is not met at sometime during the month, except where the conditions specified in Section 0421 are met.

The property reserves for CMSP are:

Number of Persons Whose Property is Considered	Property Limit
1 person	2,000
2 persons	3,000
3 persons	3,150
4 persons	3,300
5 persons	3,450
6 persons	3,600
7 persons	3,750
8 persons	3,900
9 persons	4,050
10 or more persons	4,200

0421. Spenddown of Excess Property.

Eligibility may be established by spenddown of excess property when the property reserve exceeds the property limit.

- (a) If the property reserve has been in excess of the limit from the first day of the month of application through the date of application, and the property reserve is brought within the property limit by the last day of the month of application, the CFBU shall be eligible if all eligibility requirements except for the property limit are met.
- (b) If the property reserve exceeded but was not more than double the property limit in the month for which retroactive CMSP coverage is requested, the CFBU shall be eligible under the following conditions:

All eligibility requirements except for the property limit shall be met.

The excess property reserve, as determined in (d), shall be spent for medical bills incurred during the month for which retroactive CMSP coverage is requested.

The person requesting retroactive CMSP coverage shall complete the Records of Health Care Costs-Spenddown, showing that the excess property was spent as required in (2). After determining that the required retroactive property spenddown was met, the county department shall complete the application process detailed in Article 3.

- (c) The excess property reserve, as specified in (c), shall be determined as follows: Compute the excess property reserve at the lowest point in the month in which retroactive coverage is requested.

0423. Items of Property to be Considered.

The items of property to be considered in determining eligibility are described in Sections 0425 through 0489. Each of these sections indicate:

- (a) Whether all or a portion of the item of property is exempt.
- (b) The method for determining the net market value of the specific item of property.
- (c) Any other information necessary to evaluate the property.

0425. Principal Residence.

Principal residence means the property in which the applicant or beneficiary has an ownership interest and which the applicant or beneficiary uses as his/her home.

- (a) The principal residence of the applicant or beneficiary is exempt from inclusion in the property reserve. The principal residence:

May be either real or personal property, fixed or mobile, and located on land or water.

Includes all land which appertains to the home and any other building located on such land.

May be a multiple unit dwelling. If any portion of the multiple unit dwelling serves as the applicant's or beneficiary's principal residence, the entire multiple unit dwelling is exempt under this Section.

- (b) The property shall continue to be considered the applicant's or beneficiary's principal residence and shall be exempt during his/her absence under any of the following circumstances:

During any absence of less than six months duration, other than admission to a skilled nursing facility or intermediate care facility if the applicant or beneficiary establishes an intent to return to the principal residence.

The applicant's or beneficiary's spouse or a dependent relative, as defined in Section 0036.6 or his/her child under age 21 continues to reside in the principal residence.

The principal residence cannot be either

- (A) Sold, because there are legal obstacles preventing the sale of the property and the applicant or beneficiary or person acting on his/her behalf provides evidence of attempts to overcome such obstacles.
- (B) Readily converted to cash, but a bonafide effort is being made to sell the property. For purpose of this Section, a bonafide effort to sell means that all of the following conditions are met:
 - (1) The property is listed for sale with licensed real estate broker for its fair market value as established by a qualified real estate appraiser.
 - (2) The applicant or beneficiary provides written documentation that a continuous effort is being made to sell the property.
 - (3) Offers at fair market value are accepted
 - (4) All offers are reported to the county department.
- (c) Only one property at a time shall be exempt as a principal residence.
- (d) Real property which is no longer exempt as a principal residence, shall be considered other real property beginning the first day of the month following the date it ceases to qualify as a principal residence.
- (e) Personal property which is no longer exempt as a principal residence, shall be included in the property reserve beginning the first day of the month following the date it ceases to qualify as a principal residence.

0426. Property Used to Purchase a Principal Residence.

The proceeds from the sale of real property retained by an applicant or beneficiary who does not own a suitable principal residence or who wishes to sell the current principal residence and purchase a new principal residence shall be exempt for a period of six months from the date of receipt of the proceeds so long as the proceeds from the sale of the real property are intended to be used to purchase a principal residence. Such proceeds may also be applied to the costs of moving, necessary furnishings and repair or alteration to the principal residence. If a portion of the proceeds specified herein is diverted to some other purpose, the status of the remainder is not affected provided such remainder is being retained to apply toward the purchase of a principal residence.

0427. Other Real Property.

Nonbusiness real property not exempt as a principal residence, including deeds of trust as specified in Section 0441 (b), is other real property.

Other real property not exempt under any other section of these regulations shall be exempt if both of the following are met:

- (1) The property has a net market value of \$6,000 or less.
- (2) The owner meets the utilization requirements set forth in Section 0416.

Other real property with a net market value of more than \$6,000 shall be considered as follows: (1) The first \$6,000 of net market value shall be exempt if the owner meets the utilization requirements set forth in Section 0416.

- (2) The net market value in excess of \$6,000 shall be included in the property reserve.

0429. Timeshares, Timesharing Arrangements.

The value of timeshares, timesharing arrangements shall be included in the property reserve. This value shall be the lesser of the following:

The purchase price minus any encumbrances or,

The current market value minus any encumbrances.

0441. Mortgages, Deeds of Trust and Other Promissory Notes.

Nonbusiness mortgages, notes secured by deeds of trust and other promissory notes which can be sold or discounted shall be

included in the property reserve, except as specified in (a).

A mortgage, or a note secured by a deed of trust, from the sale of real property owned by the applicant or beneficiary shall be considered other real property and subject to all the conditions placed upon other real property in these regulations.

The market value of all mortgages and notes shall be the value as established in (1), unless the applicant or beneficiary chooses to meet the conditions of (2), and (2) is lower.

- (1) The principal amount remaining on the note.
- (2) The appraised value obtained by the applicant or beneficiary from a party qualified to appraise such items. Parties qualified to appraise such items include, but are not limited to, any of the following:
 - (A) Banks
 - (B) Savings and Loan Associations.
 - (C) Credit Unions.
 - (D) Licensed loan or mortgage brokers.

Proceeds from mortgages and notes shall be considered as follows:

- (1) The principal portion of the payment shall be treated as property.
- (2) The interest portion of the payment shall be unearned income and shall be included in determining the share of cost.

0442. Life Estate.

A life estate interest in real property shall be considered real property. A life estate interest in personal property shall be considered personal property.

The value of a life estate shall be:

- (1) For a revocable life estate:
 - (A) If the applicant or beneficiary was the owner of the property prior to transfer, the entire market value of the property on which the life estate is held.

- (B) If the applicant or beneficiary was not the owner of the property prior to transfer, the value determined in accordance with the California State Gift Inheritance Tax Formula.

For an irrevocable life estate, the value determined in accordance with the California State Gift Inheritance Tax Formula.

0443. American Indian's Interest in Land Held in Trust by United States Government.

The entire market value of an American Indian's interest in land held in trust by the United States Government shall be exempt.

0445. Federal Payments to Indians and Alaskan Natives--Property.

Federal payments to Indians and Alaskan natives shall be treated as follows:

Payments received from the Federal Government under Public Law 90-507 shall be excluded from consideration as personal property when the total of nonexempt personal property, including such payments, does not exceed \$2,000 for each individual. Payments converted into other property shall be treated the same as the payments. However, if the property received through such a conversion is again converted, the property acquired is included in the property reserve unless otherwise exempt.

Payments received from the Federal Government under Public Law 92-254 or Section 6 of Public Law 87-775 shall be exempt.

- (c) Per capita payments distributed pursuant to any judgment of the Indian Claims Commission or the Court of Claims in favor of any Indian Tribe are exempt.

Shares of stock and money payments made to Alaskan Natives under the Alaskan Native Claims Settlement Act are exempt as long as the payments or stock remain separately identifiable and not commingled with nonexempt resources. Any property obtained from stock investments under the Act is not exempt.

Receipts derived from lands, as specified in Section 0537 (e), shall be exempt providing all of the following conditions are met. The monies:

Are retained by the original recipient.

Are not commingled.

- (3) Can be separately identified as a proportionate share of the applicant's or beneficiary's property

0451. Cash on Hand.

Cash on hand shall be included in the property reserve, unless it is income received in that month.

0453. Checking and Savings Accounts.

The entire amount in nonbusiness checking and savings accounts which is available in accordance with Section 0402 to the CFBU shall be included in the property reserve, subject to the limitations in Section 0453.5 and the following conditions:

- (a) Income received during a month and deposited in a checking or savings account shall not be considered as property during that month.
- (b) Accounts held with persons whose property is not otherwise included in the property reserve of the CFBU shall be considered available in their entirety if the CFBU member, or responsible relative or persons for whom that relative is responsible has access to the funds, unless all or a portion of the funds are unavailable in accordance with Section 0402.

0453.5. Savings of a Child.

Reasonable amounts saved from a child's exempt earnings for future education or for other future identifiable needs are exempt as property.

0454. Income Tax Refunds.

Income tax refunds shall be included in the property reserve.

0455. Lump Sum Payments.

Nonrecurring lump sum social insurance payments, such as nonrecurring lump sum payments of any of the items specified in Section 0507(a)(1) through (9), shall be included in the property reserve, except for retroactive SSI and Title II benefit payments which shall not be included in the property reserve for a period of six months after the month in which they are received.